

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 16-1083V
(not to be published)

J.S.,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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Filed: January 19, 2023

Chief Special Master Corcoran

Robert J. Krakow, Law Office of Robert J. Krakow, New York, NY, for Petitioner.

Zoe Wade, U.S. Department of Justice, Washington, DC, for Respondent.

ORDER GRANTING MOTION TO REDACT¹

On August 30, 2016, J.S. filed an action seeking compensation under the National Vaccine Injury Compensation Program (the “Program”). Petitioner alleges that she suffered from “inappropriate tachycardia” and autonomic dysfunction, manifesting in a wide variety of conditions and symptoms (including joint pain, dizziness, nausea, and postural orthostatic tachycardia syndrome (“POTS”)), after receipt of the human papillomavirus (“HPV”) and Hepatitis A (“Hep. A”) vaccines on August 4 and 19, 2015. *Id.* at 1. I denied entitlement on July 15, 2022 (ECF No. 109) (the “Entitlement Decision”). Petitioner appealed my determination, but her Motion for Review was denied on January 12, 2023 (ECF No. 120).

¹ Although this Order has been formally designated “not to be published,” it will nevertheless be posted on the Court of Federal Claims’ website in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012). **This means the Decision will be available to anyone with access to the internet.** As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the Order’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the Order in its present form will be available. *Id.*

Petitioner has now requested, pursuant to Vaccine Rule 18(b), that her name be redacted to initials in the caption and throughout the Entitlement Decision. *See* Motion for Redaction, dated July 29, 2022 (“Mot.”) (ECF No. 111). Respondent did not file anything in reaction to Petitioner’s motion. For the reasons stated below, I hereby grant Petitioner’s motion.

ANALYSIS

Petitioner’s redaction motion discusses the standards to be applied in weighing redaction requests, based on two decisions addressing the matter at length. *See generally W.C. v. Sec’y of Health & Hum. Servs.*, 100 Fed. Cl. 440, 456–57 (Fed. Cl. 2011), *aff’d*, 704 F.3d 1352 (Fed. Cir. 2013); *Langland v. Sec’y of Health & Hum. Servs.*, No. 07-36V, 2011 WL 802695 (Fed. Cl. Spec. Mstr. Feb. 3, 2011), *mot. for rev. den’d on non-relevant grounds*, 109 Fed. Cl. 421 (2013). I have in other decisions reviewed the Vaccine Act’s treatment of requests to redact Program decisions and rulings, as reflected in *W.C.* and *Langland*. *See generally K.L. v. Sec’y of Health & Human Servs.*, No. 12-312V, 2015 WL 11387761, at *2–4 (Fed. Cl. Spec. Mstr. Feb. 27, 2015), *mot. for review den’d*, 123 Fed. Cl. 497 (2015); § 12(d)(4)(B); Vaccine Rule 18(b).

The Act provides for redaction from published decisions of certain categories of information—“medical files and similar files”—but only if the disclosure of such information would constitute a “clearly unwarranted invasion of privacy.” Section 12(d)(4)(B). Although the Vaccine Rules make mandatory the redaction of a minor’s name, adult petitioners’ names (which are not similarly protected automatically) may also be redacted if the movant establishes proper grounds for so doing. *See generally W.C.*, 100 Fed. Cl. at 460–61 (analogizing Vaccine Act’s privacy concerns to treatment of similar issues under the Freedom of Information Act, claimant’s name was properly subject to redaction from decision); *A.K. v. Sec’y of Health & Human Servs.*, No. 09-605V, 2013 WL 322918, at *2 (Fed. Cl. Spec. Mstr. Jan. 17, 2013) (same); *but see Langland*, 2011 WL 802695, at *7–8 (Petitioners not entitled to redaction of names from decision where they failed to establish compelling grounds for so doing).

W.C. and *Langland* stand as two somewhat-opposed interpretations of how strict the standard for obtaining redaction should be. *Langland* adopts a more stringent approach, while *W.C.* emphasizes a balancing test that weighs a petitioner’s privacy interests against “the public purpose of the Vaccine Act.” *W.C.*, 100 Fed. Cl. at 460–61; *K.L.*, 2015 WL 11387761, at *2–3. In either case, however, a petitioner needs to make *some* showing to justify the relief of redaction; redaction is not available simply at a petitioner’s beck and call. *W.C.*, 100 Fed. Cl. at 460 (balancing of interests favors redaction “where an objection [to disclosure] is made on *reasonable grounds*”) (emphasis added). I have permitted redaction in cases where such a specialized showing was made, without reconciling these two competing standards or choosing one over the other. *See, e.g., K.L. v. Sec’y of Health & Human Servs.*, No. 12-312V, 2015 WL 11882259 (Fed. Cl. Spec. Mstr. Oct.

- **On or before February 23, 2023, Petitioner shall file (in accordance with Vaccine Rule 18(b)) a proposed redacted version of the Entitlement Decision redacting to initials all references in it to Petitioner by name.**

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Chief Special Master